ADDRESS TO JUSTICES

BY

THE HONOURABLE MR. JUSTICE CASSELS

The North-East Branch of The Magistrates' Association
City Magistrates' Courts
Newcastle upon Tyne, 1
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The text of an Address delivered by THE HONOURABLE SIR JAMES DALE CASSELS, Kt., one of Her Majesty's Judges of the Queen's Bench Division, to North-East Justices, at the Moot Hall Assize Courts, Newcastle upon Tyne, on Wednesday, 15th October, 1952, during Newcastle Autumn Assizes.

Private—for the personal use of Justices only.

IT is a pleasure to be invited to address you. I speak to you as one of your own body, for by virtue of my position as a High Court Judge I am a Justice of the Peace in every County in England. I have practised as a member of the Bar before Magistrates. I have been a Chairman of Quarter Sessions and I have been a Recorder. My experience has been both long and wide ; long because I attended a Magistrates' Court at the age of 10, not as a Juvenile offender, though there might have been more than one reason for that, but because my father was a Clerk in a Magistrates' Court in London ; and wide because I have even been in the Dock, but I hasten to inform you that the summons was dismissed.

A Justice of the Peace in this country represents an ancient Institution. A great and important part of our Law, Law which touches the people very closely in their everyday life, has been administered by Justices for more than six centuries and probably longer.

In 1195 men were sworn in to assist the Sheriff.

In 1264 Keepers of the Peace were appointed in every County, and that is how the Justice of the Peace gets his title.

In Queen Elizabeth's reign the Powers of Justices of the Peace were prescribed. They had to deal with rioting and tippling in ale houses. They could order the able-bodied to work. They could stop unlawful games being played. They could punish those who made profit by short measure. They could stop trespassing. Those were the days when trespassers could be prosecuted.

Think of the vast amount of work which Justices do now in about 1,000 Courts where they sit. Every year they deal with about three-quarters of a million persons for non-indictable offences, and they send about 25,000 people to prison.

How many Justices there are I do not know. There are Borough Justices and County Justices. Some Boroughs have lost their separate Commission of the Peace and that is regretted by many people.

County Justices serve on the Benches to which they are assigned, and they attend at Quarter Sessions where they deal with cases sent for Trial by a Jury, but whilst they sit and listen the only part they take is in the sentence, the Chairman summing up.

Borough Justices attend the Borough Bench and also the Borough Quarter Sessions, presided over by the Recorder, if they want to, but he does not even consult them as to the sentence.

Time spent by Justices at Quarter Sessions and even at Assizes is not wasted. It gives them the opportunity of seeing Court work at a later stage than in the Court of Summary Jurisdiction. Counsel are engaged in every case. There the Justices hear witnesses examined and cross-examined, and they hear the Jury addressed. It is an education. It makes it clear that in every case there is something to be said on both sides.

But it is of Courts of Summary Jnrisdiction that I would speak to you. It is there that Justices do their most useful and important work. It is there they go when they are first appointed, and it is there they spend nearly all their Magisterial time.

It is a distinction to be selected for the office of Justice of the Peace. I would say that, when he is first appointed, a Justice of the Peace should have at least some qualifications. He should have had enough experience of the world and of men and of affairs not to be unduly surprised at anything he hears. He should be level-headed, have common sense and patience. He should not be given hastily to jnmp to conclusions. He shonld be modest and not think that Nature has given him a knowledge of the Law which others take years to acquire. He should bear in mind that cases are decided upon evidence given in Court and not upon something which he has heard outside. He should remember that in a Court of Law all men are equal and there are no class distinctions, that a Police Officer is only a witness after all, that a Government department or a Local Authority, though discharging a public duty in bringing a case before a Court, still has to prove it, that lay witnesses and Defendants as a rule are in surroundings which are strange to them, and that the best way to listen to a case is with an open mind free from prejndice.

Justices are chosen from all classes. Their experience is infinitely varied. On the County Bench you will find the landed proprietor, the tradesman, the farmer. On the Borough Bench you will find the business man, the industrialist, the professional man, the Trade Union official, the working man. It would be unreasonable to expect that they entertain the same views about everything. Yet they mnst decide the case before them. The landed proprietor may not have a very strong and favourable leaning towards poachers, and the hunting man may not like motorists. The tradesman Justice himself may have suffered from restrictions, a Bench of teetotalers does not promote joy and happiness in the mind of a licensee who is a Defendant. The farmer Justice knows quite well that there are other ways in which water can get into milk besides deliberately pouring it in. The industrialist has had his labour difficulties. The Trade Union official may not be very sympathetically inclined towards a master.

Every Justice should step on to the Bench and leave his personal feeling behind him. He should even forget that he is a ratepayer. He does not represent the ratepayers when he is discharging judicial duties. He should not refuse to grant costs to a successful Defendant in a proper case for costs because those costs will come out of the rates. Neither should he convict merely because it is a police prosecution and he feels that to acquit will be letting the Police down.

For some years now women have been appointed to the Bench. Their contribution is of great value. In certain cases they bring to bear on the solntion of the problem a knowledge and sense of proportion which no man can be expected to possess. There are a few women Justices of the Peace who think that they are on the Bench to represent their sex. That is not so. And there are some who are unduly inclined to condemn a woman Defendant or belittle a woman's complaint. But these are exceptions. A Bench of Magistrates is well formed if it includes one or two women.

How best can a Justice of the Peace acquire a knowledge of the Law ? If he tries to do it by reading straight through the two volumes of Stone's Justices Manual he will suffer from indigestion for the rest of his Magisterial life and run perilously near qualifying for one of those institntions adequately dealt with in that monumental work under the headings " Mental Defectives " and " Persons of unsound mind."

There are many smaller publications which will give him a good working knowledge of the Law. An experienced Clerk will keep the Bench straight on the Law. After he has attended the Court for a year the new Justice of the Peace will be surprised at the amount of knowledge of the Law which he has unconsciously acquired.

He may be puzzled at first by the rules of evidence. He will hear an objection taken. In his ignorance he will probably think that the objection is frivolous. That is not so. Objections are not taken by advocates for frivolity, but because they know that in a Court of Law only evidence legally admissible should be listened to and that it should be brought forward in proper form. What is good enough for the Club smoking room or the bar of licensed premises, or is stated on the highest authority by one woman to another in the queue, is not good enough for a Court of Law.

Hearsay evidence will not do. It cannot be tested. A witness can describe what he himself has seen. He can say what the Defendant has said to him, or what somebody else has said in the Defendant's hearing, but he must be stopped when he

starts to tell what somebody else has told him. The only exception likely to come before Justices is the evidence of a complaint in sexual offences and then that it is only evidence of consistency of conduct and not of the facts.

Witnesses are not allowed to express their opinions unless they are experts. Today we have forensic laboratories where scientists examine exhibits and make valuable contributions to the trial. Then there are examiners of disputed handwriting who produce photographs and talk about curves and slopes and pen lifts and pressure. Finger-print specialists come from Scotland Yard. It is only such witnesses as these who can express opinions.

Original documents and not copies should be produced, though copies can be made for use in the case. If it is proved that an original document has been lost, oral evidence may be received of its contents.

Circumstantial evidence has its value. Mr. Justice Humphreys, the grand old man of the Criminal Law, said years ago :—" Circumstantial evidence is as good as and sometimes better than any other sort of evidence and what is meant by it is that there is a uumber of circumstances which, if accepted by the Jury as true, all point in one direction so as to make a complete and unbroken chain of evidence. If that is accepted by the Jury they may well and properly act upon such circumstantial evidence."

Evidence showing that a Defendant has a tendency to commit the type of offence for which he is being tried is inadmissible. You can have evidence of system in false pretences and some other cases.

If the Defendant gives evidence he may be cross-examined as to his character if he has said that he has a good character or in his defence he has attacked the character of a witness for the prosecution. I remember a Solicitor who did a great deal of defending in a Magistrate's Court in London who frequently started his cross-examination of the principal witness for the Prosecution with the question " And when did you come out of prison ? " But that was a bold line of advocacy rarely met with today.

Confessions must be voluntary. It is a remarkable feature of trials in the present time that a Defendant with few exceptions makes statements to the Police. No case seems to be complete without it. Sometimes a preliminary question of admissibility has to be decided if a Defendant raises the point on the statement he is alleged to have made on the ground that it was

obtained from him by force or fear, or promise of favour. The issue is a separate one from the real issue in the proceedings and has to be separately decided. The Police and the Defendant may go into the witness box and give evidence as to the circumstances in which the statement was made. Even if the Court decides that the statement is admissible it is still open to the Defendant to raise the issue again on the main question and to contend that the statement ought not to be considered against him.

Corroboration is an important part of evidence. Corroboration means strengthened. What is required is some independent evidence strengthening the particular evidence which ought to be corroborated tending to show that what has been said is true and implicating the accnsed with the offence. The unsworn testimony of children of tender years must be corroborated. The evidence of an accomplice should be corroborated. In sexual offences it is unwise to act on the uncorroborated evidence of the principal witness concerned who is called for the Prosecntion. But bear in mind that it does not follow that because two persons tell the same lie that it is true.

Allow me to say a few words about typical cases which come before Justices for decision.

Affiliation cases are very important from the point of view of both sides. By a decision against him a man may find himself liable for a periodical payment for many years. By a decision against her a woman may find herself burdened for many years unassisted. Of the man and woman who have brought such a child into existence the woman certainly suffers the more. But some woman are not above falsely alleging paternity if they think they stand a better chance of getting the money.

You may have heard of the woman in the village who successfully alleged that a farmer nearby was the father of her child, a boy. As the boy grew up she nsed to send him to the farmer for the weekly payment. This went on for some years until the boy went to collect the last payment and carried back with him a message from the farmer to the mother that the farmer was no longer his father. " Go back," said the mother " and tell him that he never was."

Corroboration is necessary by Statute. There may be admissions by the Defendant either verbally or in writing. The Defendant may give corroborative evidence if he is called as a witness as he may be even by the Complainant.

Magistrates should approach these cases with a very open mind, and hear them with exemplary patience. There is no call

for moralising about the depravity of the age. This age is no worse than any other age in this respect. An affiliation case is in fact a demand for money and not a criminal matter.

Then there are matrimonial cases. Parliament has given Magistrates jurisdiction in some matrimonial disputes, and of infinite variety are the cases which come to the Courts. Of late years attempts have been made in reconciliation and I strongly recommend the encouragement of these efforts with the assistance of the Probation Officer. These cases have to be approached in a practical way with a knowledge of the type of life led by those concerned. The use of bad language is common form in some circles. It is not every spouse who addresses the other as " Darling." If an exchange of blows should take place it need not necessarily give rise to a crisis.

I remember a case in which a husband of small stature was summoned for assaulting his wife of somewhat ample proportions. She gave her evidence displaying a conple of black eyes each of which could have been described as a beauty. " How did you come to beat your wife ? " asked the Magistrate. " Superior footwork " said the husband.

There was a woman who was summoned for assaulting her husband by biting off a piece of his ear and when the Magistrate proposed to bind her over to keep the peace the man said that that was impossible because she had thrown it away.

The decision is by no means an easy one to reach in these matrimonial cases. Solomon, if he were alive today and had to deal with these troubles between husband and wife, to say nothing of in-laws, would soon lose his reputation. In the interests of children you should hesitate about the breaking-up of a home.

Every Magistrates' Court has its experience of motoring offences. It is natural that Magistrates should feel concern about the statistics which show how many people are killed each month on our roads. On the other hand it is wrong that any Court should acquire a reputation for harshness or severity in dealing with motorists. As a rule it is the Police who prosecute. If the Police prove their case then you convict. If there is a reasonable doubt you acquit. It is the same in motoring cases as in all other cases. I shall have a word to say later about the penalty in this type of case.

When indictable offences likely to go for trial come before the Court the duty of a Magistrate is not merely to sit. He must watch the case and see that it is properly prepared for the Court of Trial. He should sign the deposition of each witness. The

reason for that is that if at the trial a witness should be dead or unable to attend through illness his deposition can only be read if *it* is signed by the Justice before whom *it* was taken. Some Courts entertain the view that it is sufficient if the signature of the committing Justice appears at the conclusion of all the Depositions. I do not think that is a compliance with the requirements of the Criminal Justice Act 1925 s. 13 (3) which provides that before *it* can be read *it* must purport to be signed by the Justice before whom *it* purports to have been taken.

Justices should further see that the Exhibits are marked consecutively, and that a list is made of them. That is obligatory under Rule 8 of the Criminal Appeal Rules 1908. Stop the Clerk if he is inclined to use the initials of the witness as if it were an affidavit, or of the Defendant, and avoid the grouping of some Exhibits under with the addition of letters of the alphabet, *e.g.* 4*a*, 4*b*, 4*c*. If the Defendant has made a statement to the Police, as he generally does, and that statement only appears in the policeman's notebook then you should ask that a copy of that statement be made an exhibit as well as the notebook. Police Officers ought not to take long statements from Defendants in their notebook, but should write them on the proper form. If at the end of the proceedings the Defendant makes a statement in Court that has to be written down by the Clerk and it too has to be signed by the Justice.

When an indictable offence comes before the Court at the end of the summary business with which three or more Justices have been dealing, it is not a good thing for all the Justices except one to leave the Bench. At least one or two of them should remain, for it is the duty of the Justices to be familiar with the procedure on indictable offeuces as well as that on summary offences.

Bail often exercises the thoughts of Justices. There are many cases in which it is only right that Bail should be allowed. The Defendant should not be handicapped in his defence. If he is in employment he may lose it if he is not granted Bail. The Defendant still has to be proved guilty, and even if he is or pleads guilty, he may not be sent to prison but put on Probation, and yet the stain of prison will remain.

But there are reasons against Bail. The Defendant may abscond and put the Police to a great deal of trouble to find him. A house-breaker may take advantage of the time on bail to break into other houses in order to get money to leave for his wife whilst he is serving his sentence, and when he comes up for trial he asks that these cases should be taken into consideration. Sometimes a Defendant has admitted his guilt in a statement to

the Police. Then it depends on the circumstances of the case. If it is a first offence and you think it is unlikely that the Court of Trial will send him to prison grant Bail. If, on the other hand, it is a case of a man with several previous convictions for the same type of offence, it would be reasonable to refuse Bail.

Remember that it is the Justices who deal with Bail. Once a Defendant is before a Court the Police neither grant Bail nor refuse it. They are there to give information to the Bench.

A very controversial question is that of punishment. People have different views. The public has views, but who is entitled to speak for the public I do not know. Some say " make the punishment fit the crime " ; others say " Make the punishment fit the criminal." So-called, and of course, self-called, reformers say that the object of punishment should be to turn the Defendant towards better conduct. The Police have views and desire that in a proper case they should see the result of their work in the form of a good sentence. The Prosecutor has views ; so also has the guilty man. Many people say that punishment should be deterrent, but it is not easy to find out whether it has been deterrent because people do not agree about cause and effect. A short while ago the Courts had many cases of Post Office Savings Bank frauds. Magistrates, from binding over, reached their maximum. Assize Courts imposed months and then years of imprisonment. It finished up with a sentence of seven years. The frauds stopped, but I cannot say that stiff sentences were the cause, or whether improved observation by Post Office officials was the real cause.

Punishment in this country has changed with the passing of the Centuries. Beheading, burning, whipping at the cart-tail for women as well as men, standing in the pillory, have all had their day.

In one Assize town the reading matter provided for the Judge is a complete set of Quarter Sessions Records for the County, going back to the days of Queen Elizabeth. For stealing 1/- the order was whipping.

We have advanced since those vicious days. Now when we catch the criminal young enough we relieve his parents of the task which rightly belongs to them of bringing him up and provide the young rascal with a complete education at a cost which many a father of a decently brought up youngster would be glad to be able to afford.

At first we give the boy a Probation Officer to talk to him and to be his friend. Then we send the boy to an approved school well equipped with masters, instructors, swimming bath and a

gymnasium. Then we send him to Borstal with experts to teach him a trade with the equivalent of a sports master to organise his games. Later on we give him a post-graduate course called Corrective Training, and later still if he really has shown that he prefers crime we take care of him and order his Preventive Detention for a long period and away he goes to languish in durance which may not be very vile. That is the career of anyone who likes to take the whole course.

Punishment for some years has received careful thought and study. No standard can be set. Punishment which will fit one case may not fit the next case, though the two cases may present the same type of offence.

There are many considerations. It must not be forgotten that one object of punishment is to punish. If I have before me a man who on a dark night has robbed with violence some hard-working woman who is making her way home probably with her wages, I do not hesitate to order that he shall not be able to repeat that offence for some years. Another object of punishment is that it should be deterrent. When some types of criminals get away with a light punishment others may be led to believe that crime can be made to pay.

Take the persistent sneak thief. He prowls around in the day time when the housewife has left for her queues. When she returns she finds that her home has been ransacked, her clothes, her husband's clothes, her children's clothes, perhaps her rent, her little bits of jewellery, and even her children's money box, have all gone. And when that scoundrel is caught he pleads guilty and asks for 40 other similar cases to be taken into consideration. He deserves severe punishment and I hope he gets it.

Take the public servant like the Post Office official and the railway servant who handle letters and goods in transit. Thefts by them call for adequate punishment. Otherwise public trust will go.

Another object of punishment is reform. The Approved School, Borstal, and Corrective Training are, I am satisfied, fulfilling their purpose. It is not a fair criticism of those Institutions to dwell on the failures of which we always hear and to ignore the successes of which we rarely hear.

Then there is Probation in which I am a believer. I think our Probation Officers are doing a wonderful work and I always invoke their assistance where I think some good may result. And that leads me to say that Justices should not consider a Probation Officer's report until after they have decided to convict for the reason that it is well to know nothing about the

Defendant except the evidence while he is presumed to be innocent. But the Probation Committee should certainly follow up the case after and hear the reports of progress or otherwise and not hesitate to have the probationer before them if he has broken the conditions.

Is the short sentence of any use ? I doubt it. A month in prison may not do an offender the slightest good and may do him a great deal of harm.

As to fine, it should be adequate but not more than the offender can pay when given time.

In proved motoring offences, unless there is a special reason you must endorse for careless driving and disqualify for a second conviction for dangerous driving or any conviction for being drunk in charge. What is a special reason ? A first offence, or the Defendant earns his living driving, is not a special reason. An instance of a special reason would be hurrying to the bedside of a dying relative or perhaps a Doctor speeding to an urgent case. It is difficult to see a special reason in any case of drunk in charge.

Some misunderstanding has arisen with regard to the offence of being in charge of a motor vehicle while under the influence of intoxicating liquor, and to some observations made a few months ago by the Lord Chief Justice of England. I can give you his own words.

" *Driving* under the influence is about as serious an offence as a man can commit and Justices should ask themselves whether there is any reason why they should *not* send him to prison and should always disqualify unless there is some wholly exceptional circumstance, difficult to imagine unless it be a bona fide mistake in taking a drug which had an unexpected or unintended effect. That happened once and was before the Divisional Court. If the case is one of being drunk in *charge* there are often circumstances of great mitigation in which, while there must be a conviction, a fine would be appropriate and one need not necessarily disqualify. A man may find when attending a party or a pub that he has taken more than he ought and take steps to see, by removing his ignition key and sending for somebody to help him, that he is not going to drive or if he has started and realises that he has had too much if he pulls his car off the road and switches off or something of that sort. I do not mean that in every case of drunk in charge as distinct from driving when drunk they should always refrain from disqnalifying. Quite the contrary, but there may be circumstances of such mitigation that if they do refrain the High Court will not interfere. It is not a proper way to deal with these cases to grant a conditional discharge

merely for the purpose of avoiding disqualifying. At one time this was a favourite dodge and the Divisional Court has stamped on it pretty heavily. The last case was one in which a doctor was found in his car so drunk that a doctor who was called to him thought he was dead. The car was on a main road and the engine running. The County Magistrates being sorry for him, granted him a conditional discharge and so avoided disqualifying him. You will not be surprised that the Divisional Court sent the case back with directions to disqualify."

As for the juvenile or young offender the problem is difficult. High Court Judges do not often see the juvenile but often see the young criminal, and have found it useful to induce the father to enter into a surety in a sum of money for the good behaviour of his son.

I should like to say a few words about conduct in Court and the conduct of the Court. A great deal depends upon the Chairman. A great deal depends ou the Clerk.

There was once a Magistrate in London where the Magistrate sits alone, who said that the difference between his Clerk and himself was that his Clerk listeued without deciding and he decided without listening.

The Chairman should have a knowledge of the Law. He should be able to control the proceediugs. He shonld not ask the Defendant questions when the Defendant has merely made a statement from the Dock and has not gone into the witness box to give evidence. Sometimes when a Defendant, not represented by an advocate, is asked to cross-examine a witness he makes a statement. He should not be stopped either by the Chairman or the Clerk. An undefended Defendant merely wants to put his case. He should be listened to and the Court should afford him assistance by questioning the witness upou the points which the Defendant makes in his statement.

A Chairman should be careful to be courteons to everybody, Defendant, witnesses, and advocates, particularly to advocates, for they may answer back, and the proceedings will go much better if there is co-operation between the Bench and the advocates.

When the Bench retires to consider its decision the Chairman shonld shortly sum up both sides and stop discussion becoming irrevelant and not hesitate to stop any Justice wantiug to communicate something which he has heard outside. The Chairman has no casting vote. For that reason it is better to have an odd than an even number of Justices. I said an odd number of Justices and not a number of odd Justices.

The Justices themselves should be attentive to the proceedings. Even if they are bored they should show no signs of it. It is not a proper thing for two Justices to have a joke between themselves while the case is in progress. All cases are serious and the parties are entitled to have their cases dealt with seriously.

The Clerk advises the Court on the Law. Justices are not bound to accept his advice but should hesitate long before going counter to it. He can advise the Court at the end of the case for the Prosecution that there is no case to answer, but it would be wrong for him to advise the Justices to convict because that is a matter for the Court and not for him, and Justices should not ask him for his views. The Clerk may know a great deal about the case which does not appear in evidence. The Police may have consulted him before starting the Prosecution and may have dropped a hint, but he should keep it to himself, and if he shows signs of communicating it should be stopped.

It is the opinion of the Judges of the Queen's Bench Division that the Clerk should not retire with the Justices. They should, however, inform him of the sentence or penalty before announciug it lest either should be contrary to what the Law provides or in excess of their powers.

You are engaged in work of the greatest importance in the Judicial sphere. It is not merely an honour to be a Justice ; it is an appointment to do a necessary piece of work and to discharge a real duty. You perform your task close to the people. You inspire confidence by the courtesy and patience of your hearing and the Justice of your decisions.

When you were sworn in, you took an oath of allegiance to the Crown and you also took an oath in which were the words:

> " I will do right to all manner of people after the laws and usages of this Realm without fear or favour, affection or ill-will."

You represent in this country of ours a valuable and historic institution which I am sure no Judge of the High Court would ever suggest changing.

You deserve, and I am sure you have, the thanks of the community for your services.



THE NORTH-EAST BRANCH OF THE MAGISTRATES' ASSOCIATION.

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